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To: Microsoft ATR
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Subject: Microsoft Settlement

Having considered the Proposed Final Judgement (PFJ) in the Microsoft antitrust case, and speaking as a computer industry professional who has been actively engaged in the technology since before the rise of Microsoft, I would like to offer the following comments:

The PFJ does not address key issues of the monopolization violations affirmed by a unanimous 7-0 Court of Appeals in June 2001. It is my understanding that Microsoft's violations of antitrust law are beyond question and that legal action taken at this point should be intended to curtail any effort by Microsoft to continue with these activities. Thus, as an industry professional, I oppose the proposed settlement.

Despite the rejection by the Court of Appeals of Microsoft's petition for rehearing on how Microsoft unlawfully maintained its monopoly with contractual tying and middleware bundling, the proposed Department of Justice (DOJ) settlement does nothing to address this issue.

The settlement makes no effort to restore competition in the Operating System (OS) market that Microsoft monopolized unlawfully. Recommendations from the D.C. Circuit ruled that a remedy must "unfetter the market from anticompetitive conduct" and "terminate the illegal monopoly." Proposed solutions included source code licensing and provisions to allow OEMs (Original Equipment Manufacturers) to make changes to the OS itself, yet the settlement does nothing to address the issue.

The current version of Windows XP engages in the same predatory practices that are harmful to competition as earlier versions were to Netscape. There is no indication that, despite having engaged in unlawful behavior, Microsoft has changed their practices to compete in the market lawfully. There is no protection against favorable pricing deals to OEMs that support Microsoft policies or the "commingling of code" that the Court of Appeals claims violated the Sherman Act.

The settlement gives Microsoft the ability to stifle competitors' legitimate access to interoperability data by allowing Microsoft too much flexibility to withhold information for security reasons. This could have disastrous consequences for the burgeoning open source software movement in general, and Microsoft's most likely

competitive
rival, the Linux OS, in particular.

Microsoft also has, under the terms of the settlement, participation in the Technical Committee overseeing compliance with the settlement. A committee which works within Microsoft's headquarters, is paid by Microsoft, and which cannot tell the public how well Microsoft is complying with the settlement!

In short, Microsoft has repeatedly demonstrated a tendency to employ creative means of circumventing or delaying legal action, and yet this PFJ is riddled with opportunities for Microsoft to continue to abuse its monopoly and further impede competition in the IT industry. It does little or nothing to address Microsoft's unlawful practices, ill-gotten gains, or restrict continued similar behavior.

Did Microsoft write this document?

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